

**DATE:** October 12, 2010

**TO:** Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Review and Consideration of Options for the Regulation of Hand-Cart Vendors

### **RECOMMENDATION**

That the City Council:

- (1) Review this report concerning the City's current prohibition on hand-cart vending, and
- (2) Provide direction to staff on a possible revision to the municipal code to allow hand-cart vending.

### **SUMMARY**

The Hayward Municipal Code ("HMC") currently prohibits all hand-cart vending on City streets. This staff report discusses the current prohibition and seeks Council guidance on the option of permitting and regulating hand-cart vending. If the Council supports the development of regulations to permit hand-cart vending, City staff will draft a regulatory scheme that allows hand-cart vending if certain specified requirements are met. The requirements may consist of permit and business license procurement, background checks, caps on number of permits to be issued, and restrictions on the areas where sales may occur.

### **BACKGROUND**

The sale of any food product in the City requires a permit and a business license. Section 5-2.11 of the HMC provides that it is "unlawful for any person to sell food, either cooked or uncooked, without first securing a permit as herein provided and paying a license fee..." This section broadly applies to all food sales, including fixed location stores and mobile vendors, such as push carts<sup>1</sup> and mobile carts<sup>2</sup>.

Hand-cart sales, on the other hand, are specifically prohibited. Section 6-2.01 of the HMC provides: "It shall be unlawful for any person to hawk, peddle, vend or sell any article, merchandize, edible

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<sup>1</sup> Push Carts are small carts that are mobile and occupy a temporary location while they are operational (e.g. hot dog stand).

<sup>2</sup> Mobile Carts are motorized vehicles that are mobile, but may frequently occupy a space at a certain location (e.g. catering truck, also referred to as a taco truck).

foods of any kind, or any other thing of value from a hand cart or other vehicle moved by human power along or upon the streets of the City of Hayward.” This is a narrow prohibition that addresses human powered hand-cart vending – of products such as ice cream, frozen juice bars and candies – on City streets. Although it is outside the scope of the current report, street corner vending is also prohibited to the extent that the sale location encroaches upon a City street<sup>3</sup>.

Despite the current prohibition on hand-cart vending, many vendors continue to operate within the City’s jurisdiction. Many factors contribute to this: low priority for law enforcement, limited enforcement resources, lack of general knowledge about the prohibition, and the fact that for some individuals, particularly undocumented persons, hand-cart vending remains one of the only viable forms of employment.

## DISCUSSION

Staff estimates that up to sixty hand-cart vendors operate in the City of Hayward on a daily basis. The blanket prohibition on hand-cart vending has not resulted in the discouragement of this business. Instead, the number of hand-cart vendors within the City seems to be growing.

Generally speaking, hand carts are owned by a corporate entity (“Corporate Vendor”) and not the individuals who conduct sales. The entity then employs or contracts individuals to carry out hand-cart vending on City streets. The entity may own multiple hand carts and deploy individuals to conduct sales in multiple jurisdictions.

The City Manager, the City Attorney’s Office, and Hayward Police Department have assessed the benefits and negative consequences of allowing hand-cart vendors within the City and to determine what economic opportunities such operations may bring, particularly for low-income and immigrant entrepreneurs. City staff has also received input from interested stakeholders concerning the benefits and consequence of allowing hand-cart vending, including corporate vendors, hand-cart vendors and Hayward Area Recreation & Park District (“HARD”) representatives. As a result of these discussions and input, staff has determined that the development of a regulatory scheme that allows and regulates hand-cart vending can improve the City’s enforcement capacity and the quality of hand-cart vending City-wide.

In preparing an ordinance, staff would seek to encourage hand-cart vendors to operate in compliance with permit requirements and health and safety requirements. Staff recommends the following concepts for a hand-cart vending regulation:

- **Permit Requirements:** All vendors would be required to obtain a Hayward hand-cart vending permit, a Hayward business license and an Alameda County Environmental Health Services permit.
  - **Hayward Vending Permit and License:** This requirement would facilitate recouping of the cost of public services that are associated with a retail food sales permit. Furthermore, it will mitigate concerns by fixed location store owners, who may

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<sup>3</sup> Street Corner Vending refers to the temporary street corner sales of boxed fruit and vegetables.

contend that hand-cart vendors have an unfair competitive advantage (e.g., less costs with respect to taxes, regulatory fees, and/or rent).

- Alameda County Environmental Health Services Permit: This requirement would ensure the safety of food sold by hand-cart vendors. The County of Alameda's food safety program monitors all retail food facilities in the county to ensure a safe food supply for the public. The County conducts routine and follow-up inspections, investigates complaints and suspected foodborne illnesses, conducts multi-lingual food safety classes, and issues permits after confirming compliance with health and safety regulations.
- Background Check: Although it does not guarantee consumer safety, this requirement would allow the Hayward Police Department to conduct a criminal background check. A background check does not automatically lead to a determination of immigration status or a report to Immigration and Customs Enforcement.
- **Operational Requirements:** Establish standards for hours of operation, insurance and liability for damages.
  - Hours of Operation: Hand-cart vending would be permitted only during designated hours.
  - Insurance: Hand-cart vendors would be required to maintain comprehensive general liability insurance. An insurance requirement is prudent as hand-cart vendors conduct their commercial enterprise upon a public right of way.
  - Liability for Damages: As a permit requirement, hand-cart vendors would be required to defend, indemnify and hold harmless the City for damages or injuries to persons caused by a vendor's acts or omissions.
- **City Permit Caps:** A survey of ordinances from neighboring East Bay cities reveals that only one city – the City of Oakland – places a cap on the total number of vendor permits active at one time. Staff recommends that a cap on the number of vendor permits be set at sixty and review to take place within 24 months. This proposed cap is based upon the estimated number of hand-cart vendors currently vending in the City.
- **Geographic Regulations:** Staff recommends the creation of buffer zones for certain districts and schools:
  - Prohibition for Predominantly Residential Areas: Hand-cart vending may be prohibited within predominantly residential areas. Staff has received input both in favor and in opposition to such a prohibition:
    - Arguments in Favor of Allowing Hand-cart Vending in Residential Areas: Sales in residential areas comprise the bulk of a hand-cart vendor's sales.

Stakeholders have complained that restricting their operation in these areas will significantly hurt their businesses.

- Arguments Opposing Hand-Cart Vending in Residential Areas: Staff has received complaints from residents about the health and safety of the food and noise level in residential areas. Additionally, HPD reports that hand-cart vendors are often targets of robbery due to the amount of cash they keep on their persons. The majority of the crime against vendors occurs in residential areas because there are fewer witnesses.
- Buffer Zone Near Schools: Hand-cart vending may be prohibited within a certain proximity from a school during specified times. This would address safety concerns for pedestrian and children.
- Prohibition in HARD Parks and Facilities: City staff met with representatives from the HARD to discuss their policy on hand-cart vending. HARD currently prohibits hand-cart vending in all HARD parks and facilities. This prohibition is authorized by resolution and enforced by citations issued by HARD staff or the HPD.

## **FISCAL IMPACT**

Staff anticipates off-setting the costs of administering the Ordinance via collection of permit fees and business license taxes.

## **PUBLIC CONTACT**

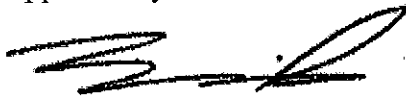
City staff has met with several groups of stakeholders, including corporate vendors and representatives from the Hayward Day Labor Center. Staff also met with representatives from the HARD to discuss hand-cart vending. Staff will continue outreach should the Council direct staff to initiate the development of hand-cart regulations.

## **NEXT STEPS**

1. Provide staff with guidance concerning whether the municipal code should be amended to allow hand-cart vending, and if so guidance on the features of such an ordinance.
2. Direct staff to bring forth a proposed Ordinance for approval by the City Council.
3. If Council were inclined to prohibit vending of all types, including hand-cart vending, staff would bring back legislation implementing such direction.

*Prepared by:* Michael S. Lawson, City Attorney

*Approved by:*



Fran David, City Manager